

EPSTEIN BECKER & GREEN, P.C.

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*Attorneys for Defendant United States Health Clean Corporation d/b/a US Health Clean*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NEPHTY CRUZ and MICHAEL BALLETTO, as :  
TRUSTEES OF THE DISTRICT 6 INTERNATIONAL :  
UNION OF INDUSTRIAL, SERVICE, TRANSPORT : 07 Civ. 6392 (LTS)(KNF)  
AND HEALTH EMPLOYEES HEALTH PLAN and :  
THE DISTRICT 6 INTERNATIONAL UNION OF :  
INDUSTRIAL, SERVICE, TRANSPORT AND :  
HEALTH EMPLOYEES PENSION PLAN, :  
Plaintiffs, :  
: - against - :  
US HEALTH CLEAN, :  
: Defendant. :  
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**MEMORANDUM OF LAW IN SUPPORT OF  
EPSTEIN BECKER & GREEN, P.C.'S MOTION TO  
WITHDRAW AS COUNSEL FOR DEFENDANT US HEALTH CLEAN**

Epstein Becker & Green, P.C. (“EBG”) respectfully submits this memorandum of law in support of its motion to withdraw as counsel for Defendant United States Health Clean Corporation d/b/a US Health Clean (“USHC”) in this action.

**EBG'S MOTION TO WITHDRAW SHOULD BE GRANTED**

Local Civil Rule 1.4 provides that “[a]n attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the court and may not withdraw from a case without leave of the court granted by order. Such an order may be granted only upon a

showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.” As described herein, and as set forth in the accompanying Declaration of David J. Clark, EBG has shown that “satisfactory reasons” exist to allow EBG to withdraw as counsel to USHC in this action.

Canon 9 of the Lawyer’s Code of Professional Responsibility provides, “A lawyer should avoid even the appearance of professional impropriety.” To avoid such an appearance of impropriety, EBG now moves to withdraw as counsel to USHC.

David J. Clark is the attorney at EBG who has represented USHC in this action. (*See* Clark Decl. ¶ 2.) On March 7, 2008, Mr. Clark received a telephone call from Marc A. Tenenbaum, Esq. of Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC, counsel for plaintiffs, who informed Mr. Clark that EBG had previously represented plaintiffs in other matters, and that such representation had continued until 2005. Mr. Tenenbaum also noted that some events at issue in this action occurred in 2005 and earlier. Mr. Tenenbaum stated that these circumstances could present a conflict for EBG or at least could give the appearance of impropriety. (*See* Clark Decl. ¶ 7.)

Prior to March 7, 2008, Mr. Clark was not aware that EBG had represented plaintiffs on any matters. Upon further inquiry it was learned by Mr. Clark that for several years prior to May 2005, EBG provided plaintiffs with general advice and counsel regarding the administration of plaintiffs’ Funds, and also represented plaintiffs with respect to an unrelated lawsuit pending in the United States District Court, Eastern District of Virginia, Index No. 3:99 CV 556, in which it was alleged that the District 6 Pension Fund violated the Employee Retirement Income Security Act of 1974 (ERISA) by allegedly misusing its funds in a variety of ways. EBG stopped representing plaintiffs in or around May 2005. (*See* Clark Decl. ¶ 8.)

The instant action essentially involves allegations by plaintiffs that USHC did not make payments to plaintiffs which USHC was contractually obligated to make. One of USHC's defenses is that some payments that it thought were being made to plaintiffs were actually being received and kept by the District 6 Union (not the plaintiffs). (*See Clark Decl.* ¶ 9.)

There is no connection whatsoever between EBG's prior representation of plaintiffs and the events involved in this lawsuit, and no privileged information of plaintiffs has been used against them, as Mr. Clark, the only attorney who has represented USHC in this matter, was unaware until March 7, 2008 that there even was a prior representation of plaintiffs by EBG. (*See Clark Decl.* ¶ 10.)

As Canon 9 of the Lawyer's Code of Professional Responsibility provides, "A lawyer should avoid even the appearance of professional impropriety." Further, EBG wishes to avoid even the suggestion that it might be in a position to use any privileged information of plaintiffs against them in this lawsuit.

Accordingly, it is respectfully requested that the Court issue an order permitting EBG to withdraw from representing USHC herein, as "satisfactory reasons" exist for such withdrawal, and allow USHC an appropriate time period to retain new counsel.

In addressing motions to withdraw or substitute counsel, district courts also typically consider whether the prosecution of the suit is likely to be disrupted by the withdrawal or substitution. *Whiting v. Lacara*, 187 F.3d 317, 321-22 (2d Cir. 1999) (internal citations omitted). Here, EBG's motion should be granted because it should not substantially affect or delay any pending matters before this Court.

This case was commenced on July 12, 2007 and all parties filed answers to the Complaint on September 21, 2007. (*See Clark Decl.* ¶ 3.) Discovery is not complete, no trial date has been

set and a settlement conference is scheduled for March 18, 2008. (See Clark Decl. ¶ 4, 5; Ex. A.) While USHC would need to retain new counsel, the withdrawal of EBG as counsel at this nascent stage should not interfere with any substantive proceedings before the Court.

### **CONCLUSION**

For all of the foregoing reasons, EBG's motion to withdraw should be granted in its entirety.

Dated: New York, New York  
March 11, 2008

EPSTEIN BECKER & GREEN, P.C.

By:   
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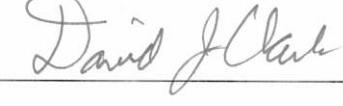
*Attorneys for Defendant United States  
Health Clean Corporation d/b/a US Health  
Clean*

**CERTIFICATE OF SERVICE**

I, David J. Clark, an attorney admitted to practice before this court, hereby certify, under penalty of perjury, that on March 11, 2008, I caused a true copy of the attached Memorandum of Law to be served by first class mail upon:

Marc A. Tenenbaum, Esq.  
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DAVID J. CLARK